

HOUSE No. 1566

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to provide landowner's title protection.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1629 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROVIDE LANDOWNER'S TITLE PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after Chapter 183B

the following chapter:

CHAPTER 183C

LANDOWNER'S TITLE PROTECTION ACT

Section 1. This chapter shall be known and may be cited as the Landowner's Title Protection Act.

Section 2. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:

"Decree", a decree, judgment or order of any court within the commonwealth including, but not limited to, a decree, judgment or order of the superior court or land court affecting an interest in land or a decree of judgment of the probate court allowing a will or appointing an administrator.

"Deed", any type of instrument of conveyance, except a mortgage or a tax taking by a municipality, including, but not limited to, a warranty, quitclaim, release, foreclosure, fiduciary, or commissioner's deed, or a sheriff's deed or tax collector's deed recorded subsequent to foreclosure of the right of redemption; or a treasure's deed of low value land held under tax title, which is recorded subsequent to recording of a decree establishing title pursuant to section 80B of chapter 60, and one year has elapsed after recording, in either case without any petition to vacate having been timely filed.

"Land", any parcel or tract of unregistered land in the commonwealth, together with any and all buildings and other improvements thereon unless such buildings or improvements are expressly excepted therefrom.

"Origin of title", a title transaction, other than a devise or probate court decree as to an intestacy or the allowance of a will, in the chain of title, containing language or, in the case of a decree, provisions sufficient to create or transfer the interest in land which forms the basis for the title to such land, and which was the most recent as of that date which is the beginning of the sufficiency period prior to the date on which the sufficiency is being determined.

"Recorded", recorded in the appropriate registry of deeds or filed in the appropriate registry of probate.

"Records", records of the registry of deeds for the county or district in which the land is located and of any registry of probate in the commonwealth.

"Sufficiency Period", fifty years, except in those cases where a longer period is required pursuant to the provisions of paragraph (b) of section 3.

"Title transaction", any transaction affecting title to any interest in land, including, but not limited to, any deed, grant, release, devise, instrument of taking by eminent domain, decree foreclosing redemption from a tax taking and other decree.

Section 3. (a) Any person having an interest in land, who has an unbroken chain of title to such interest for the sufficiency period or more, shall be deemed to have a good and clear record and marketable title to that interest, subject only to the provisions of section 4. An unbroken chain of title exists when the records disclose: (i) the origin of title; and (ii) nothing in the records within or subsequent to the origin of title which purports to divest the person claiming the interest.

(b) If, within fifty years preceding the date on which the sufficiency of title is being determined, there appear to have been no title transaction, other than a devise or probate court decree as to an intestacy or the allowance of a will, relating to such interest or the land it affects, the sufficiency period shall be seventy-five years.

Section 4. A good and clear record and marketable title shall be subject to:

(a) any interest or encumbrance which is created by a title transaction and is within the chain of title of the origin of title on or subsequent to the effective date of the origin title.

(b) any interest or encumbrance which is created by a title transaction prior to the effective date of the origin of title only if the origin of title or subsequent recorded instrument specifically identifies either such prior interest or encumbrance or the instrument in the records wherein the interest or

encumbrance was created, but a general reference to a title source such as "for our title see", or "said land is the same described in", or general phrases such as "subject to any rights, easements, restrictions and other matters, of record" or words or phrases of similar import, shall not be deemed a "specific identification therein" so as to preserve such interest or encumbrance;

(c) any right or easement granted to owners abutting private ways under section 5 of chapter 187;

(d) any right or easement granted, excepted or reserved by any instrument, if there is evidence of the existence of such right or easement beneath, upon or above any part of the land described in such instrument, whether or not observable on or above the ground;

(e) any right or easement granted, excepted or reserved by any instrument, if there is evidence of the use of such right or easement upon any part of the land;

(f) any interest or easement of any public utility corporation or any public service corporation organized and existing under chapter 158 or chapter 164;

(g) any reversionary interest of a lessor, or any interest of a successor of any lessor at the expiration of any lease;

(h) any interest of the United States, the commonwealth or any political subdivision, agency, authority or instrumentality of the commonwealth;

(i) the rights of any person arising from a twenty-year period of adverse possession or prescriptive use, which period was in whole or in part subsequent to the date of origin of title;

(j) conservation, preservation, agricultural preservation and affordable housing restrictions exempted under the provisions of clause (c) of the first paragraph of section 26 of chapter 184;

(k) any interest or instrument of record which has been created pursuant to section 6 of chapter 21E;

(l) any liens created pursuant to section 13 of said chapter 21E;

(m) any restriction, easement, condition or license held by any governmental body, as defined in section 26 of chapter 184, if the instrument imposing such restriction, easement, condition or license is duly recorded and indexed in the grantor index in the registry of deeds or registered in the registry district of the land court for the county or district wherein the land lies so as to affect its title, and describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries; and

(n) all interests preserved in chapter 185.

72 Section 5. Except as provided in section 4, all interests, the existence of which depend upon any title transaction that
73 occurred prior to the effective date of the origin of title, however denominated, whether legal or equitable, present or
74 future, which interests may be asserted by any person, whether or not under a disability, including but not limited to
75 all rights of redemption in the case of taking or sale for the non-payment of real estate taxes, are hereby declared to
76 be null and void with respect to the interest specified in section 3.

77 Section 6. Notwithstanding the foregoing, any person to whom a decree of confirmation under chapter 185 has been
78 issued shall be deemed to have a good and clear record and marketable title as of the effective date of such decree
79 subject only to the matters set forth in such decree and the matters enumerated in section 46 of chapter 185.

80 Section 7. This chapter shall be liberally construed to effectuate the legislative purpose of simplifying and
81 facilitating title transactions by allowing persons to rely on a record chain of title as described in section 3, subject
82 only to such limitations as appear in section 4.

83 Section 8. Except as herein specifically provided, nothing herein shall be construed to change the period for
84 bringing an action or for doing any other required act under any statute of limitations or to affect the operations of
85 any statute governing the effect of the recording or the failure to record any instrument affecting land.

86 SECTION 2. If the sufficiency period specified in section 3 of chapter 183C of the General Laws would expire
87 prior to January 1, 2006, such period shall be extended so as to expire on January 1, 2006.

88 SECTION 3. This act shall take effect upon its passage and shall apply to instruments executed on, after and prior to
89 said date.